



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: October 11, 2012

Agenda Item No. 6: Issuance of a 45-Day Notice to Correct Deficiencies to the County of Mono Lead Agency Program Pursuant to the Surface Mining and Reclamation Act (SMARA).

INTRODUCTION: Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB. As defined in Public Resources Code Section 2728. A lead agency as defined under SMARA means *"the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to this chapter."* SMARA lead agencies also have other responsibilities including assuring the conduct of adequate inspections at least once each calendar year, and taking appropriate enforcement actions when warranted.

At its regular business meeting held on June 9, 2011, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) on the overall status and performance status of the County of Mono (County) surface mining program pursuant to the Surface Mining and Reclamation Act (SMARA). Deficiencies in the County's surface mining program were identified and the County has subsequently responded to the deficiencies identified in the LART report. The SMGB is considering issuance of a 45-Day Notice to Correct Deficiencies (Notice) pending review of the County's response.

STATUTORY AUTHORITY: Public Resources Code (PRC) Sections 2774.4(a) and (b) provide criteria to the SMGB when considering assumption, or restoration, of certain SMARA powers of a lead agency. Specifically, PRC Section 2774.4(a) states that if certain deficiencies exist, the SMGB can assume certain SMARA lead agency responsibilities as follows:

"If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this



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chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.”

Public Resources Code Sections 2774.4(c) provides criteria the SMGB considers should it determine to issue a 45-Day Notice to Correct Deficiencies, and states:

“(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.”

BACKGROUND: California is the only state in the conterminous United States where surface mine reclamation is not regulated at the state level. Most states also maintain permitting authority when it comes to mining regulation; whereas, in California permitting authority is decided at the local level. SMARA pursuant to PRC Section 2728 defines a lead agency as a city, county, San Francisco Bay Conservation and Development Commission (BCDC), or the SMGB which has the principal responsibility for approving a surface mining operation or reclamation plan. Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-07 titled “*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*” This evaluation assessed the lead agency’s status and performance of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans should a surface mine site be characterized as idle for a period exceeding one year. Based on this review, the overall performance of SMARA lead agencies was found to significantly vary throughout the state. For the most part, overall performance was found to be poor, reflecting a number of factors including primarily financial constraints, limited or lack of internal technical expertise, and overall low priority. As of March 2011, LART has commenced review of 18 SMARA lead agencies.

The review of the County’s SMARA program was performed in 2010, with the LART report completed and forwarded to the County on October 28, 2010. The County responded to the LART report in correspondence dated May 27, 2011, and during the SMGB’s regular business meeting held on September 8, 2012. The response received by the County has been reviewed.

COUNTY OF MONO SMARA PROGRAM: Nineteen surface mining operations are reported to exist within the jurisdiction of the County (Table 1). Eleven of the operations are operated by Caltrans. Eight operations are characterized as active, with the remainder being closed. Commodities produced include primarily sand and gravel, with subordinate amounts of cinder, clay, decomposed granite, fill dirt, sericite and pumice.

In review of the LART report for the County and responses provided by the County, several deficiencies were reported. Notably, deficiencies noted by LART reported albeit, not limited, included:

- Failure to update and adjust financial assurances cost estimates on an annual basis for two operations;
- Failure to notify OMR of reclamation plan approval for six operations (including failure to respond to OMR's comments for five of these operations);
- Failure to inspect one operation since 2003;
- Failure to conduct adequate inspections;
- Failure to adequately close certain operations that have no intent to resume mining; and
- Failure to request an Interim Management Plan for one idle operation, among other issues.

ANALYSIS: Following review of the County's response to the deficiencies identified in the LART report, outstanding deficiencies remain as briefly discussed below and summarized in Table 1.

Deficiency No. 1 - Approved reclamation plans or financial assurances which are not consistent with this chapter: Prior to the mine operator cashing the financial assurance instrument, the financial assurance mechanism (FAM) for the Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) was listed for only \$30,000 although the financial assurance cost estimate (FACE) was for the amount of \$110,000. For the Pacific Sericite Mine (CA Mine ID #91-26-0003), the FAM was for only \$10,000, although the FACE was for \$64,000. The cashing out of the financial assurance instruments for the Hot Creek Kaolin Mine and Pacific Sericite Mine reflects lack of timely action of the County. The two sites are now abandoned without sufficient monies to reclamation the sites in accordance with the approved reclamation plans.

This deficiency remains outstanding.

Deficiency No. 2 - Failed to inspect or cause the inspection of surface mining operations as required by this chapter: Although inspections have been performed, such inspection reports fail to comply with the SMGB's regulations.

Inspection reports should make reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. Furthermore, such inspection reports must also include any quantification of site conditions, where applicable. SMGB regulations (CCR Section 3504.5(f)) state that “*Inspections may include, but shall not be limited to the following: the operation’s horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.*” Such information must be provided in the inspection reports.

This deficiency remains outstanding.

Deficiency No. 3 - Failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter: The mine operator for the Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) was able to cash the financial assurance instrument for two of his mines (91-26-0002 and 91-26-0003) without reclamation being performed. The mine operator has since abandoned both of the mines. The cashing out of the financial assurance instruments for the Hot Creek Kaolin Mine and Pacific Sericite Mine reflects lack of timely action of the County. The two sites are now abandoned without sufficient monies to reclamation the sites in accordance with the approved reclamation plans.

In addition, the County issued a Notice and Order on August 30, 2011, and provided a due date of November 11, 2012, to complete reclamation. As of the 2012 inspection of both mine sites, reclamation has not commenced.

This deficiency remains outstanding.

Deficiency No. 4 - Failed to take appropriate enforcement actions as required by this chapter: Failure to commence enforcement is demonstrated by:

- High wall slopes in contrast to what is provided in the approved reclamation plan exists at Black Point Cinder (CA Mine ID #91-0026-0001), Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) and Pacific Sericite (CA Mine ID #91-26-0003).
- No stockpiling of topsoil at the Pacific Sericite Mine (CA Mine ID #91-26-0003).

- Possible reclamation boundary and depth issues at the Black Point Cinder (CA Mine ID #91-0026-0001), Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) and Desert Aggregates (CA Mine ID #91-26-0029).
- Sidecasting was performed at Pacific Sericite Mine (CA Mine ID #91-26-0003).
- Poor access road grading at the Pacific Sericite Mine (CA Mine ID #91-26-0003).
- Inadequate revegetation efforts that do not meet the requirements of the approved reclamation plan are reported for Green Lakes (CA Mine ID #91-26-0017) and Desert Aggregates (CA Mine ID #91-26-0029)..
- The high wall is locally over steepened at Desert Aggregates (CA Mine ID #91-26-0029).
- The pond access road traps run-off and is actively eroding at Desert Aggregates (CA Mine ID #91-26-0029).

In addition, at Black Point Cinder (CA Mine ID #91-26-0001), the mine operator has submitted an application to amend the reclamation plan, but since the United States Forest Service has not approved the Plan of Operation, the amendment process is on hold.

For the Hot Creek Kaolin Mine (CA Mine ID #91-26-0002) and Pacific Sericite Mine (CA Mine ID #91-26-0003), the County issued a Notice and Order on August 30, 2011, and provided a due date of November 1, 2012, to complete reclamation. As of the 2012 inspection at both mine sites, reclamation has not commenced.

In regard to Green Lakes (CA Mine ID #91-26-0017), the County issued a Notice of Violation on June 20, 2011. CalTrans has repeatedly asserted that reclamation has been completed at this site. The County disagrees with CalTrans claim. CalTrans submitted a 2011 FACE for \$4,000 which the County rejected as insufficient. On February 2, 2012, CalTrans produced a letter from the Bureau of Land Management (BLM) asserting BLM's desire to take control of the site as a borrow pit. The County has asked OMR for guidance on how to officially transfer the pit over to BLM.

In regards to Desert Aggregates (CA Mine ID #91-26-0029), the County issued a Notice of Violation (NOV) on July 19, 2011, requiring the operator to create new test plots, conduct a survey to establish whether the toe of the slope encroaches into the 100 feet setback, install a culvert at the bottom of the dip in the pond access road at the north property boundary to prevent further erosion on the access road, and immediately revegetate the former area of a pond. There was no response from County regarding the steep slopes at this site.

No information has been provided at the time this Executive Officer Report was prepared to demonstrate that the County understands the administrative process pertaining to enforcement of SMARA, and has taken any enforcement actions via issuance of a Notice of Violation, Order to Comply or Administrative Penalty. In summary, this deficiency remains outstanding.

Table 1
Summary of Surface Mining Operations Situated in the County of Mono

Surface Mine Name	Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (2008 Annual Report/ Aerial Photo)	Produced Product	Deficiencies Noted
Black Point Cinder, Inc.	CA Mine ID # 91-26-0001	Sierra Aggregate Company	Active	08/10/11	31	10/34.3	Cinder	2,4
Hot Creek Kaolin Mine	CA Mine ID # 91-26-0002	Standard Industrial Minerals	Active (Abandoned)	08/24/11	34	20/58	Clay	1,2,3,4
Pacific Sericite Mine	CA Mine ID # 91-26-0003	Standard Industrial Minerals	Active (Idle)	09/19/11	5	5/11.6	Sericite	1,2,3,4
Frank Sam Mine	CA Mine ID # 91-26-0004	U. S. Pumice Company	Active (Idle)		219	0.90/380	Pumice	2
#24A North Benton	CA Mine ID # 91-26-0007	Caltrans	Closed		4.2	0/NA ^(a)	Sand and gravel	
#116-12 Baseline	CA Mine ID # 91-26-0010	Caltrans	Closed		4.5	0/NA	Sand and Gravel	
#117 Pole Line Sites	CA Mine ID # 91-26-0011	Caltrans	Closed		29	0/NA	Sand and Gravel	
#135 Convict Creek	CA Mine ID # 91-26-0013	Caltrans	Closed		21	0/21	Sand and Gravel	
#189 Sweetwater	CA Mine ID # 91-26-0015	Caltrans	Closed		2.3	0/2.3	Sand and Gravel	
#190 Baseline	CA Mine ID # 91-26-0016	Caltrans	Closed		39.6	0/39.6	Sand and Gravel	
#205 Green Lakes	CA Mine ID # 91-26-0017	Caltrans	Closed		5.2	0/5.2	Sand and Gravel	4
#210 Milner Fan	CA Mine ID # 91-26-0018	Caltrans	Closed		47	2/47	Sand and Gravel	
#213 Benton Hill	CA Mine ID # 91-26-0021	Caltrans	Closed		7.7	0/7.7	Sand and Gravel	
#250 Rickey Ditch	CA Mine ID # 91-26-0024	Caltrans	Active		40	1.7/NA	Sand and Gravel	1, 2, 4
#273 Burcham Flats	CA Mine ID # 91-26-0026	Caltrans	Closed		2.0	0/2	Sand and Gravel	
Desert Aggregates	CA Mine ID # 91-26-0029	Caltrans	Active		75	64/79.8	Sand and Gravel	2,4
Cain Ranch	CA Mine ID # 91-26-0035	Marzano & Sons General Engineering Contractor	Active		35.3	30/44	Uncertain	2
Sonora Pit	CA Mine ID # 91-26-0037	Mono County Department of Public Works	Active		3	4/4	Decomposed Granite	2
Harris Flat	CA Mine ID # 91-26-0044	Kiewit Pacific Company	Closed		25	0/25	Fill Dirt	

(a) NA = Not available.

EXECUTIVE OFFICER’S RECOMMENDATION: Based on the record before the Executive Officer at the time this report was prepared, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued. Should the County not correct the deficiencies to the satisfaction of the SMGB within the 45-day period, a public hearing be scheduled at such time pursuant to PRC Section 2774.4(c).

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

First Option – Do not issue a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that the County is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer’s Report, find that the County of Mono is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the Board not consider issuance of a 45-Day Notice of Deficiencies.

[or]

Second Option – Defer issuance of a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that the County is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer’s Report, find that the County of Mono is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.

[or]

Third Option – Issuance of a 45-Day Notice to Correct Deficiencies:

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make progress, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to County of Mono pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:



Stephen M. Testa
Executive Officer